Court No. 2

In the High Court of Uttaranchal at Naintial.

Appeal From Order No. 1436 of 2001

National Insurance Company Ltd.,
Through its Senior Divisional Manager,
Divisional Office, Haldwani, Dist.- Nainital.

.....Appellant.Opp.party No.2

Versus

(1) Smt. Harbans Kaur w/o late Sri Jagir Singh
(2) Harjinder Singh S/o late Sri Jagir Singh,
(3) Nishan Singhy S/o late Sri Jagir Singh,
(4) Km. Paramjeet Kaur, minor D/o late Sri Jagir Singh
(5) Kulwant Singh, minor S/o late Sri Jagir Singh
Respondent Nos. 4 & 5 through their natural guardian
And mother Smt. Harbans Kaur,
All R/o village Taimra, Tehsil-Bilaspur, District-Rampur

.....respondents/Claimants

(6) Salim Akhtar S/o Kilafat Hussain,
R/o 316 A, Jigar Colony, Tehsil Sadar District-
Moradabad at present R/o Mohalla Milkayan
Sihaaura, District-Bijnore,
(7) Sharafat Ali S/o Ali Hussain, R/o Jigar Colony,
Tehsil Sadar Moradabad, District-Moradabad.

.....Respondents/Opp. Parties

Sri Lalit Belwal, learned counsel for the appellant.
Sri Rakesh Thapliyal, learned counsel for claimants-respondents.

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Dated: 12th Aug., 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This is an appeal filed by the Opposite party No. 2- National Insurance Company against the award dated 27.04.2001 passed by the Motor Accident Claims Tribunal/ Additional District Judge/III Fast Track Court, Nainital in Motor Accident Claim Case No. 267 of 1995.

Brief facts of the case are that the accident took place on 04th August, 1995 in which Jagir Singh died who was traveling in Tempo No. UGI 9340 while going from

Rudrapur to Bilaspur. A defence was set up before the Tribunal by the Insurance Company that truck No. 3613 who hit the said Tempo was not being driven by its valid driver. Therefore, the Insurance Company was not liable to pay the compensation, as the liability was of the owner of the truck in question. Further, driving of the vehicle by its driver having fake driving lecence is not covered under the policy.

Learned counsel for the appellant submitted that despite notice neither the owner nor the driver turned up and the driving licence was not on record which could be verified by the Insurance Company. On the date of award the said driving licence was filed by the counsel of the claimants and when the copy of the said driving licence was received by the Insurance Company, the Insurance Company after the verification of the said driving licence came to know that the said driving licence is fake. For this reason, the Insurance Company has moved an application before this Court for taking additional evidence on record under Order 41 Rule 27 of Civil Procedure Code .

It is a dispute between the insured and insurer as to whether the compensation is to be paid by the Insurance Company or by the insured. Since the truck in question was insured, therefore the Company has to pay the amount and if there was breach of policy conditions, the Insurance Company may recover the amount from the insured in accordance with law as held by the Apex Court ***in 2001 AIR SCW 1340, New India Assurance Company, Shimla versus Kamla and others*** which has been affirmed by the larger Bench subsequently. Therefore, the appeal of the appellant is not maintainable. The

Impugned order dated 27.04.2001 is affirmed so far as amount of award is concerned.

So far as the payability of quantum of compensation is concerned, the same shall be paid by the Insurance Company, However in order to enable the Insurance Company to get the issue settled as to whether the liability was of the insured or not in view of the fake driving licence, the appeal is allowed and is sent back to the Tribunal concerned to record a finding on this issue. The application of the appellant under Order 41 Rule 27 of the Civil Procedure Code is allowed.

The appeal is allowed accordingly. The Tribunal shall decide the aforesaid issue after issuing the notice to the owner of the vehicle in question and its driver. However, We provide that the amount deposited in this case shall be disbursed amongst the claimants/appellants as ordered by the Tribunal.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P.Singh